Inside the A-War Hearings

Navy Scientist Explains How Nuclear War May Even Breed A Better Race of Men, See Page 3

I. F. Stone's Weekly

VOL. VII, NO. 26 JULY 6, 1959 WASHINGTON, D. C. 15 CENTS

First Judicial Blow Against Faceless Informers

A deeply and almost evenly divided Supreme Court, in which the opposing sides are often mutually repelled into positions more extreme than they would adopt in a calmer atmosphere, may be descried in the actions and between the lines of the decisions with which this term ended last Monday. Perhaps the best index of the turbulence which reigns within the closely guarded confines of the conference room was the order setting down the *Scales* case for a second reargument next Fall. It is difficult to believe that so much reargument would have been required 18 months ago, when the Court was riding the crest of its brief Warren period liberalism, before the impact of the campaign from white supremacist and rightist had built up such fierce pressure on the Court. The *Scales* case is the first test of the membership clause of the Smith Act, and this clause if read literally requires a fundamental break with past legal procedures. Can a man be convicted for mere membership in an organization espousing revolutionary ideas without proof of individual guilt —without evidence that he knew, shared and intended the unlawful purposes of the organization? Such mass proscription and collective guilt are clearly foreign to our best traditions, and their adoption reflects the philosophical contaminations of the cold war, the domestication in our country by rightists and FBI men of just those totalitarian concepts they claim to be fighting. One can easily imagine Harlan striking down this membership provision 18 months ago, with perhaps only Clark dissenting.

Guilt by Association in Marriage

Three decisions Monday showed that the liberals are not yet permanently in a minority of four. Justice Potter Stewart tipped the scales by joining Warren, Black, Douglas and Brennan in ruling against the use of "faceless informers" in loyalty-security cases, in reversing the suspension from practice imposed on defense counsel in the Hawaii Smith Act trials, and in finding a clear First Amendment issue in the censoring of the film, "Lady Chatterley's Lover," where the Court was unanimous in upholding the film but bitterly split and even fragmented in charting the legal route to the agreed result. The most important of these three cases was the decision in *Greene v. McElroy,* which involved an appeal from an engineer whose career in industry had been ruined by anonymous accusation in a typical industrial security procedure. Here one had the feeling that if Stewart had decided to vote the other way, Frankfurter, Harlan and Whittaker might have been led to join him and Clark in finding some rationale to uphold these procedures. Rather than be in a minority, and seeming to champion loyalty standards which included in this case not only guilt by association but guilt by association with one's own wife, they concurred in the result but declined to join in the reasoning of the majority.

How Informers Are Recruited

"said has a friend who worked for sears, roebuck and has family of three children and wife. he made a terrible mistake one time. in 1941 he lived in the same house as jack hall [Hawaii's longshoremen's leader prosecuted under the Smith Act]. the fbi wanted him to testify. he said i feel jack hall is one of the finest people i have known. apparently the fbi didn't like this. so they suggested to sears and roebuck to fire him because he wouldn't cooperate . . . he wasn't fired so they went to the Los Angeles and Chicago offices of sears and roebuck and convinced them he had to be fired. he was fired because he refused to be a stool pigeon and informer. the government gets away with it by making people fear if they don't do as it wants they'll be branded red and lose their jobs."

—From the newspaper reporter's notes on the speech by Harriet Bouslog Sawyer, defense counsel in the Hawaii Smith Act cases, which led to her disciplinary suspension for one year on the ground that the speech, made during the trial, reflected on the presiding judge and violated legal ethics. The conviction was reversed 5-4, by Brennan, Warren, Black and Douglas with Stewart concurring.

The *Greene* case is another example of the way in which the cold war, with the enhanced power it gives the military and the secret police, is eating away the foundations of our free society. Justice Clark, who sees the world very much as does J. Edgar Hoover, protested in his lone dissent that no one has a constitutional right of access "to the Government's military secrets." But that is not the real issue. The real issue must be seen in the context of a situation in which the category of government secrets is spreading all over the bureaucratic and industrial landscape; our military mania for secrecy is beginning to approach Russian proportions. Some 3,000,000 workers in industry are directly affected by industrial clearance procedures. Ordinary clearance alone does not mean access to top secrets, and top secret clearance is hedged about by *need-to-know* regulations which require even the most politically purified and homogenized to show special need for specific information. In this context can the government set up what purports to be a fair trial procedure for clearance and ruin a man as disloyal without giving him a chance to confront and cross-examine his accusers? A man does not have a right to see military secrets but he does have a right to protect his reputation and livelihood from kangaroo court destruction by faceless informers. The government may arbi-

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Preventive War Crowd Used Holifield Hearings to Spread the Idea . . .

The hastily prepared Holifield subcommittee hearings on nuclear war were largely a re-play of the hearings he has held in earlier years on civil defense, with one new element added. This was the use made of the hearings by the preventive war crowd in the military bureaucracy to try out publicly the ideas they have been putting forward privately to small groups "by invitation only." Holifield's earlier hearings in a subcommittee of House Government Operations were used to advocate a civil defense shelter program. These new hearings in a subcommittee of the Joint Committee on Atomic Energy were used to point up the idea that nuclear war, though horrible, could still be waged successfully. The Washington evening paper headlines the day after the hearings closed — "Most Would Survive A-War, Experts Find" (*Star*) and "H-Bombs Can't Kill Off the Human Race" (*Daily News*)—represent just the kind of tranquillizers some of our Big Brothers at the Pentagon prescribe.

The summary in the Washington *Star*, the home newspaper of the Associated Press, reflected the success of adventuristic military elements seeking to sugar-coat a thermonuclear Apocalypse. The *Star* said the first four days of the hearings were "old stuff" — everyone knew that hydrogen bombs "would kill millions of people and leave others living in caves." From the final day's discussions, however, "a more constructive theme emerged." The *Star* said "the moral to be drawn . . . is not that millions would die but that most Americans would survive—and democracy and the national economy would, too."

How the Happy Ending Was Arranged

This Hollywood scenario ending was invited by the assumptions on which the hearings were based and the man Chairman Holifield picked to sum up their implications. As may have been expected, the final optimistic stories nowhere mentioned that the war assumed by the hearings was a "limited," or as Holifield later called it "a medium-sized," nuclear war and did not purport to give a picture of what an all-out war would do. The public had a right to know how these assumptions were arrived at, and what chance there was that any such conflict would be kept so conveniently limited, but every time these questions obtruded themselves, Holifield changed the subject. The hearings assumed that 260 bombs with a total power of 1453 megatons would be dropped upon our country*. At one point in the hearings (June 25) when pressed by other members of the subcommittee, Holifield admitted "It would be ridiculous to assume that only 260 weapons would be used in an attack upon any major nation when many hundreds of thousands of weapons exist and thousands of bombers are available and four to five hundred submarines, as one nation has."

The Survivors Must Carry On The War

"Another alternative would be to move the population after about two weeks to areas of the country that had not experienced significant levels of fallout . . . there are fairly large areas, mainly in the western half of the country, that would be available. Since these areas are sparsely inhabited regions of desert, mountains and plains, the task of providing minimal housing and other living accommodations for millions of survivors would appear to demand a major effort.

"In any event, neither of the foregoing alternatives [the other is a system of shelters for long term occupancy—IFS] is very satisfying because we are interested in more than safe living areas for our population. We are interested in reviving the economic and political life of the country and in bringing the war to a successful conclusion. . . ."

—Walmer E. Strope, U.S. Naval Radiological Defense Laboratory, Holifield subcommittee, June 25.

No one explained just why this "ridiculous" figure was nonetheless used. Holifield, after producing a letter from Lieut. Gen. James M. Gavin saying that the attack envisaged was "well within the capabilities of a potential aggressor", declared, "It could happen here and it could happen in much worse form than we have here." A question shortly afterward by Congressman Van Zandt unexpectedly disclosed that two years ago civil defense authorities had presented figures to the committee on a hypothetical attack with 250 weapons but estimated the total megatonnage at 2500, or 1,000 megatons more than that assumed this year. Van Zandt asked Eugene J. Quindlen of the Office of Civil Defense Mobilization, whether new information had since "made it possible for you to give us a better estimate of what would happen under these circumstances?" The witness replied cryptically, "I would not put it exactly that way, Mr. Van Zandt." Quindlen thought the assumptions underlying the new estimates more realistic than those in 1957 but, "this was not too important at the time," he added, "because this was not intended for public use. . . . It was intended more as an internal staff exercise." Just what Quindlen meant was never made clear.

There is a striking contrast between the assumptions of these hearings and the attacks assumed in the Rand Corporation's preventive war study, *Report on A Study of Non-Military Defense* (July 1, 1958, Report R-322-RC) whose principal author, Herman Kahn, turned up as a star witness the last day of the Holifield hearings. The Rand Corpora-

***It was also assumed that 2500 additional megatons would be dropped abroad by the enemy on our bases and by us on the enemy. We were incorrect last week in saying that no retaliation was assumed.**

Lectures by That Rand Corp. Sage on Preventive War—and World War VIII

"Outlines of Lectures — I. The Nature and Impact of Various Kinds of Thermonuclear War. This lecture asks the question, 'Could it ever be profitable to initiate a thermonuclear war?' It is concluded that there are plausible, even probable, circumstances in which this question could be answered in the affirmative. . . .

"II. The Formulation and Testing of Strategic Objectives and Plans. This lecture asks such questions as, 'Why and how might thermonuclear war be initiated?'

"III. World War I Through World War VIII. Some characteristics of eight wars, real or hypothetical, are analyzed. . . . The eight wars are assumed to have occurred as follows: 1914, 1939, 1951, 1956, 1961, 1965, 1969, and 1972."

—From pages 2 and 3 (first page withheld) of a prospectus on the lectures Herman Kahn of Rand Corp. has been giving to select groups around the country. This description was put on the press tables as background before he appeared Friday, June 26, to sum up the nuclear war hearings.

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. . . That Nuclear War Is Not Yet Suicidal and Can Be Waged Successfully

tion study figured that a 20,000 megaton attack hitting 150 U. S. cities even with as much as six hours warning time would kill 160 million of 180 million Americans. They also figured that a 1500 megaton attack on 50 American cities would kill 90 million Americans. But the Holifield hearings assumed that a megatonnage almost the same as this—1,453—could hit 71 metropolitan areas and result in only 40,000,000 deaths or 50,000,000 fewer than the Rand study assumed. It would be interesting to know more about the numbers game behind these figures, how much was science, and how much public relations.

Rand (the name comes from the initials of Research and Development) is an "independent, non-profit" corporation set up by the Air Force in 1948 to handle long range research problems. The preventive war study here referred to was the work of a group directed by Herman Kahn. Kahn, now on leave of absence from Rand to the Center of International Studies at Princeton, is a Caltech M.A. (1947) in physics and mathematics who worked for Northrup and Douglas aircraft companies before joining the physics division of Rand. According to the local Rand office, from which these facts were gleaned, "He has spent considerable time working on the application of Monte Carlo problems." The local office could not explain what "Monte Carlo problems" meant but judging by his report this may be a cute code term for gambling with the populations of the U. S. and the world in a theoretical thermonuclear war game. When the hearing ended on Thursday, June 25, Holifield announced that next day at the final session Kahn would "make a presentation on the final implications of these hearings." By picking Kahn, Holifield picked a man calculated to put a preventive war gloss on them. Kahn, as may be seen from the lecture prospectus printed at the bottom of page two), has been delivering private talks around the country on the wisdom, feasibility and mechanics of preventive war and illustrating with a series of hypothetical conflicts down to and including World War VIII, which is scheduled to start in 1972. Rand likes cheerful scientists.

Kahn, when he took the stand after demonstrations of the Banshee Fallout Alarm and a small device called FIDO (Fallout Intensity Detection Oscillator), turned out to be a big fat expansive young man with thick glasses and a habit of speaking with machine gun rapidity. The implications he drew were what one might have expected. Kahn is a loquacious man, not easily pinned down, but a listener was apt to conclude (1) that if war does not come soon it may be too late to fight one successfully, (2) that our capacity to deter and to fight if necessary, down to striking the first blow, will be enhanced if we take steps in advance to protect our civilian population and (3) although we must write off our metropolitan areas, the rural parts of the country can be protected from fallout by shelters and the country later rebuilt. This means consigning millions of city dwellers to the most horrible kind of death by incineration and creating a race of survivors among whom cancer may be as common as colds but as Kahn said, improving on Sherman, "war is horrible. There is no question about it. But so is peace." No one ventured to question this nonsense. The hearings disclosed no greater menace than these radioactive scientists on the military research gravy train for whom human beings are but digits to be fed into an IBM machine.

But Suppose It's a Leg Without A Head?

"We do not wish to conclude our testimony in this matter without reiterating most strongly our conviction that we should emphasize the survivors rather than the casualties. I, personally, like the phrase which is used in the rehabilitation of handicapped workers: 'It is not what you have lost that's important, but what you have left'."

—Eugene J. Quindlen, Office of Civil Defense Mobilization, to the Holifield subcommittee, June 26.

Shelters Are For Those Lucky to Survive

Sen. HICKENLOOPER. In other words . . . if you don't get killed in the blast, you may get killed in the radiation. If you don't get killed in the radiation, you get killed in the fire storm. If you do not get killed by the fire, you get killed by lack of oxygen in this area. I am asking you seriously what object is there particularly in putting tremendous effort into building shelters.

Dr. [Wm. T.] HAM, Jr., [testifying on thermal effects] I said that I felt in a certain sense we might possibly have the cart before the horse. We would have to survive first and then see whether we could protect ourselves from the fallout.

—Holifield subcommittee, June 23.

Navy Scientist Says Nuclear War Might Even Breed A Healthier Race

"In the threat of nuclear warfare we face the expectation of a great influx of mutations into our human heredity. We'd like to put a better face upon it. Not every geneticist takes an increase in mutations as an unqualified evil. ASIDE FROM THE ONE IN A BILLION CHANCE OF A REALLY BENEFICIAL MUTATION [emphasis added], we have to realize . . . the unmeasured advantages of heterosis . . . the evolutionary value of genetic variability. . . .

"I would like to stand back and look again at the nuclear bombing here assumed. . . . It is doubtful whether after such an attack it [radiation] will come down even in many years to our present maximum permissible limits. . . . The casualties on this field of battle will be falling for years and generations to come.

"Fortunately the human race has the power to go on, leaving the fallen behind and cleansing itself of the genetic injuries inflicted. We can even draw an ideal picture of the survivors of the world-wide irradiation, emerging as a bigger, stronger, wiser, gentler, healthier race than would otherwise have developed. The price would be: A large or major fraction of the population killed, or dying within a few months; survivors carrying many radiation-induced mutations: high infant and adult mortality for many generations, straining the naturally high fecundity of women to maintain the population. Then as populations begin to build up again, would come the opportunity for conscious eugenic management, with large families limited to parents of superior native endowments. . . .

"It is possible to come out all right, but the path to salvation is obstructed by many a cherished sentiment as well as the self-indulgence of our 'affluent society'."

—Dr. Robert R. Newell, U.S. Naval Radiological Defense Laboratory, before the Holifield subcommittee, June 24.

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Greene Case Again Documents the Gossipy Mish-Mash Used to Test Security

Several Supreme Court Justices Were at That Same "Disloyal" Dinner

(*Continued from Page One*)

trarily shut off access to secrets. But when it pretends to try a man, may it do so unfairly? This is the issue.

Where Washington Resembles Moscow

The situation is made worse when the screening is in the hands of a secret police network which regards any liberal or do-gooder as *prima facie* suspect. The test of political reliability here, as the facts in the Greene case again demonstrate, is a stodgy conformity, just as in the Soviet Union. Any contact with Russians—like any Russian contact with Americans in Moscow—puts a damning stain on a man's reputation no amount of evidence can later erase. Attending social functions at the Russian Embassy in Washington 1944-47 and meeting at that time with Russian officials were among the counts against Greene, though top level executives of his company "whose right to clearance [the Court says] was never challenged" corroborated his testimony that he was trying to sell his company's products. Another count against Greene was that in 1947 he attended the Third Annual Dinner of the Southern Conference for Human Welfare. "This dinner," says a footnote to the decision, "was also attended by many Washington notables, including several members of this Court." The weight attached to the scuttlebutt collected by the FBI from unknown informants seems to have varied with the atmosphere. Clearance was three times given Greene *before* the Korean War (top secret in February, 1950) and then revoked in November, 1951. It was restored in 1952 after a hearing but revoked again in 1953 when McCarthy's shadow fell across the Pentagon.

The determination of loyalty is obviously far from being a science. The value of allowing confrontation and cross-examination is that, as in any other proceeding, they are the best method we have for sifting out error, mistaken identity, false accusation and malice. Though these cases are usually discussed as if only the accused had an interest in the outcome, the public has an interest in keeping the atmosphere of free discussion from being poisoned by fear of informers, and the government has an interest in keeping the services of valuable people like Greene, who had done good work for the Navy in the fields of electronics and rocket launchers. If informers are kept anonymous, irresponsible gossip is encouraged and, among the so-called "professional informers," psychopathic liars are long shielded from view, as has now been demonstrated in a number of proceedings where famous FBI undercover spies had to stand up in the witness box. Chief Justice Warren mustered a majority of eight for the proposition that such procedures have not been authorized explicitly by either Congress or the President. He spoke for a group of five who intimate that such unfair trial methods would be a violation of the Constitution even if so authorized while Frankfurter, Harlan and Whittaker joined only in the result but "intimating no views as to the validity of these procedures." There will now be a demand for action in Congress and the reaction will test the country's recollection of its fundamental principles. Only the first round has been won in the fight against the faceless informer.

Unused Perhaps to Sexy Movies

The divisions in the Court are nowhere more evident than in the way it agreed unanimously—in six separate opinions—that the film, "Lady Chatterley's Lover" was not obscene. Justice Frankfurter quoted D. H. Lawrence in favor of censoring pornography and used the film as a peg on which to expound his theory of regulation under the First Amendment. Justice Potter Stewart, for a five man majority, declared in full blown Holmes-Brandeis accents that the First Amendment protects advocacy of adultery as well as socialism. Black joined in that opinion, in a separate opinion by Douglas opposing all censorship as prior restraint and in a third opinion of his own (as the only Justice who had not seen the film) objecting that precedent would require the Court to "appraise each movie, on a case by case method." He sideswiped Frankfurter by declaring that the latter's quotation from D. H. Lawrence implied that censorship "should be applied only to publications that make sex look less ugly, that is . . . less alluring." We have rarely seen the Court so overheated. Sex seems to be worse even than communism for judicial composure.

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NEWSPAPER

Entered as Second Class Mail Matter Washington, D. C. Post Office

I. F. Stone's Weekly. Entered as Second Class Matter at Washington, D. C., under the Act of March 3, 1879. Post-dated Mondays but published every Thursday except the last two Thursdays of August and December at 5618 Nebraska Ave., N. W., Washington 15, D. C.
An independent weekly published and edited by I. F. Stone; Circulation Manager, Esther M. Stone. Subscription: $5 in the U. S.; $6 in Canada; $10 elsewhere. Air Mail rates: $15 to Europe; $20 to Israel, Asia and Africa.

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